

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MARIA L. HORCASITAS

Claimant

VS.

MONFORT, INC.

Respondent

Self-Insured

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Docket No. 198,812 & 198,813

ORDER

Claimant appealed an amended preliminary hearing order entered by Administrative Law Judge Jon L. Frobish dated July 19, 1996, that denied claimant's request for medical treatment.

ISSUES

The single issue raised by the claimant for Appeals Board review is whether claimant gave timely notice of her accident to the respondent as required by K.S.A. 44-520.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

Timely notice is an issue specifically enumerated in K.S.A. 44-534a(a)(2), as amended, that grants the Appeals Board jurisdiction to review a preliminary hearing order.

The preliminary hearing which is the subject of this appeal was held before Administrative Law Judge Thomas F. Richardson on July 18, 1995. Thereafter, the preliminary record was kept open for evidentiary depositions to be taken by both parties with the last deposition taken on January 25, 1996. Administrative Law Judge Jon L. Frobish, successor to Administrative Law Judge Thomas F. Richardson, entered a

preliminary hearing Order dated April 24, 1996, that denied claimant's request for medical treatment. Claimant timely appealed that order to the Appeals Board. The Appeals Board in an Order dated July 8, 1996, remanded the preliminary hearing order to the Administrative Law Judge ordering him to identify the basis for denying claimant's request for medical benefits. Administrative Law Judge Jon L. Frobish, as a result of the remand from the Appeals Board, entered the amended preliminary hearing Order dated July 19, 1996, which is the subject of this appeal.

Claimant alleged she injured her back and hip when she fell in the ladies locker room on the premises of the respondent on two separate occasions, November 17, 1994, and December 8, 1994. Claimant testified she reported both falls to Lisa Phillis, respondent's nurse on duty at the respondent's infirmary. Claimant testified she was instructed by respondent's nurse after the November 17, 1994 incident to see a doctor the next day, November 18, 1994, for her work-related injury and also for treatment of a female problem. Claimant further testified that after the November 17, 1994 incident she notified Reyes Hinojos, a labor trainer employed by the respondent, that she had fallen in the locker room. Claimant alleged Mr. Hinojos told her to go see the respondent's nurse and to report the accident. Following the December 8, 1994 accident, claimant also testified she went to the infirmary and notified the respondent's nurse she had fallen and was injured. Furthermore, claimant testified two fellow workers witnessed the second fall.

Claimant presented the testimony of Reyes Hinojos who verified claimant had notified him sometime in November or December 1994, that she injured her back when she fell in the bathroom. Mr. Hinojos verified he told claimant to go to the nurses' station but he did not know whether claimant had followed his instructions.

Respondent presented the testimony of Mitchell Wood, personnel director; Ken Barnett, acting health coordinator; and Lisa C. Phillis, staff nurse. Mr. Wood established that the attendance records of the claimant indicated claimant had not worked the day of her first alleged accident on November 17, 1994. On that date, the attendance records indicated claimant had failed to notify the respondent the reason for her absence. The claimant was also absent on November 18, 1994, and the records indicated she had called in absent because of personal illness. None of the attendance records or documents in Mr. Wood's possession indicated claimant had been absent because of a work-related injury. The emergency room record of St. Catherine Hospital dated November 18, 1994, was admitted into evidence at the regular hearing which showed claimant had been treated and gave a history of having a fever for three days, sore throat, no menstrual period for three months, and she had commenced bleeding the day before. The emergency room record did not mention that claimant had injured her back in an accident at work on November 17, 1994. Lisa Phillis testified she had seen the claimant on November 15, 1994 with complaints of temperature, vomiting, possible pregnancy, and sore throat. The infirmary records indicated claimant was taken off work until November 21, 1994, because of those complaints and she was released to return to regular work by the emergency room doctor, Dr. Dale Betterton. The respondent's infirmary records also

indicated claimant was off work on December 5, 1994, for personal medical problems and she returned to work on December 6, 1994, to full duty. Lisa Phillis unequivocally testified claimant had never notified her that she had injured her back as a result of a work-related accident.

For preliminary hearing purposes, the Appeals Board finds the Administrative Law Judge's Amended Order that denied claimant's request for medical treatment should be affirmed. The Appeals Board finds the greater weight of the evidence, at this juncture of the proceedings, contradicts claimant's assertion that she notified the respondent of her alleged accidental injuries of November 17, 1994, and December 8, 1994. Furthermore, claimant has not produced any evidence that Reyes Hijonos, trainer for the respondent, had any supervisory responsibility for the claimant and, therefore, was not a duly authorized agent to accept notice of an accident for the respondent. The Appeals Board finds that the first notice the claimant gave the respondent in regard to the alleged accidents of November 17, 1994, and December 8, 1994, was on May 26, 1995, at the direction of her attorney. This exceeds the ten-day notice requirement and also exceeds the 75-day requirement for claimant to establish just cause for not giving notice within ten days. See K.S.A. 44-520.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge Jon L. Frobish dated July 19, 1996 should be, and the same is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of September 1996.

BOARD MEMBER

c: Stanley R. Ausemus, Emporia, KS
Terry J. Malone, Dodge City, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director